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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,853	02/28/2002	Manuela Javet	1964	7358

7590 07/19/2004

Striker Striker & Stenby  
103 East Neck Road  
Huntington, NY 11743

EXAMINER
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ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/069,853	<b>Applicant(s)</b> JAVET ET AL.	
	<b>Examiner</b> Eisa B Elhilo	<b>Art Unit</b> 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 5,6,11-13 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5,6, 11-13 and 16-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

1 This action is responsive to the amendment filed on 5/11/2004.

2 The cancellation of claims 1-4, 7-10 and 14-15 is acknowledged. Pending claims are 5-6, 11-13 and 16-22.

3 Claims 5-6, 11-13 and 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,540,791 B1), for the reasons set forth in the previous office action that mailed on 2/25/2004.

#### ***Response to Applicant's Arguments***

4 Applicant's arguments filed 5/11/2004 have been fully considered but they are not persuasive.

With respect to the rejection based upon Dias et (US' 791 B1), Applicant argues that Dias teaches a composition comprising sodium chloride which is not an alkalizing agents, the applicant also argues that the reference does not teach or suggest including a salt in the compositions that promotes or improves the absorption of an anionic direct dye as claimed. Further, the applicant argues that the newly added claims recite a composition that does not comprise any oxidizing agent based on the exemplary compositions on pages 8 and following of applicant's specification. Furthermore, the applicant argues that the composition is further limited to water, salts for promoting absorption of the anionic direct dye and at least one conventional additive ingredients limited to those recited on pages 6 and 7 of the specification.

The examiner respectfully, disagrees with the above arguments because the reference teaches physiologically compatible salts of sodium chlorides, sodium citrates and sodium tartrates as recited in the claims 11 and 12 (see col. 46, lines 55-67). Also the

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consist language of claim 17, allow more than one physiologically compatible salt of organic or inorganic acids to be used in the claimed composition, and, thus, the language of the claim is not limited to specific salts. Further, with respect to the exemplary compositions on pages 8 and following of applicant's specification, which the applicant relied on to indicate that the claimed compositions do not comprise oxidizing agent as recited on claim 16, the examiner would like to point out that the claimed composition is not limited to these examples as admitted by the applicant on page 8, forth paragraph in the specification. Further, the applicant has not shown on record the criticality of excluding the oxidizing agents in the claimed composition. With respect to the argument that the reference does not teach or suggest inclusion of the salts in the compositions to promote or improve the absorption of an anionic direct dye as claimed, the examiner disagrees with this argument because the reference teaches a method for dyeing hair comprising applying to the hair a dyeing composition comprising similar dyeing ingredients to those claimed and therefore, a chemical composition and its properties are not inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily presents. (see *In re Spada*, 911 F. 2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Therefore, the prima facie case of obviousness has been established.

5       **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

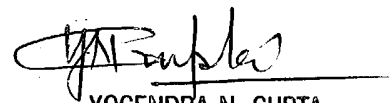
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
July 12, 2004



YOGENDRA N. GUPTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700